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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,205

12/15/2003

Radek Caba

R.304476

4781

7590 05/15/2007
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EXAMINER

PILKINGTON, JAMES

ART UNIT

PAPER NUMBER

3682

MAIL DATE

DELIVERY MODE

05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,205

Applicant(s)

CABA ET AL.

Examiner

James Pilkington

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,12,13,16,17 and 20 is/are rejected.
- 7) ☒ Claim(s) 3-11,14,15,18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1 and 3 are objected to because of the following informalities:

- Clm 1 line 2 reads "comprising," should be - - comprising: - -
- Clm 1 line 3 insert a ';' at the end of the line
- Clm 1 line 5 insert a ';' at the end of the line
- Clm 1 line 6 insert a ';' at the end of the line
- Clm 1 line 12 reads "means, and" should be - - means; - -
- Clm 3 line 2 reads "comprising," should be - - comprising: - -
- Clm 3 line 3 insert a ';' at the end of the line
- Clm 3 line 5 insert a ';' at the end of the line
- Clm 3 line 6 insert a ';' at the end of the line
- Clm 3 line 12 reads "means, and" should be - - means; - -

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3682

Re clms 1 and 3, the phrase "when the pedal lever stop means slides past...position behind said bearing block stop means" renders the claim indefinite since there is no antecedent basis in the claim for when this event occurs.

Re clm 3, the phrase "generally protruding" renders the claim indefinite. It is not clear to the examiner how something generally protrudes, either something protrudes or it doesn't. How does the term "generally" qualify any degree?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 12, 13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Djordjevic, USP 6,520,046 originally published as PG Pub 2002/0112560 on August 22, 2002.

Re clms 1-2, 12, 13, 16, 17 and 20 Djordjevic discloses an accelerator pedal module comprising:

- A bearing block (14)
- A pedal lever (12) held rotatably about a pivot axis (about shaft 34) by means of a pivot connection on the bearing block (shaft 34 is mounted in holes on the pivot block)
- First stop means (bottom of bearing block 14, character 20, which contacts stoppers 21)

- Second stop means (21) on the pedal lever (12) in position to strike the associated bearing block stop
- Wherein the pedal lever stop (21) and the bearing block stop have a geometry which prevents the pivot connection, once completed from being undone (the stops prevent over rotation)
- Wherein the pedal lever stop (21) and the bearing block stop (20) together form an idling stop (prevents the pedal from coming disconnected therefore the stops creates an idling stop)
- Wherein the pedal lever stop (21) is resiliently prestressed against the bearing block stop (20, by spring assembly) counter to a pedal actuation direction (when not actuated the pedal is biased so that the top pedal stop is in contact with the bearing block stop)

Allowable Subject Matter

6. Claim 3 would be allowable if amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
7. Claims 4-11, 14, 15, 18 and 19 are objected to as being dependent upon a rejected base claim.

Response to Arguments

8. Applicant's arguments filed 4/06/07 have been fully considered but they are not persuasive.

9. The applicant argues that Djordjevic does not disclose an element which elastically deforms during pivotal engagement of the pedal lever with the bearing block.

The examiner disagrees and argues that Djordjevic does indeed disclose the structure of "elastically deformable means" since all material is capable of elastically deforming. The term "deformable" in the claim does not require for the means to deform, the means must only be capable of deforming which Djordjevic is clearly capable of doing.

10. In response to the applicant's argument that Djordjevic does not anticipate the language "for elastically deforming in a region of at least one of said bearing block stop means or said pedal lever stop means during establishment of said pivot connection...deformation said pedal lever stop means engages behind said bearing block stop means" the examiner disagrees. Since Djordjevic anticipates all the structural limitations of the claims the examiner directs the applicant to MPEP 2114 where the following is stated:

• **2114 [R-1] Apparatus and Article Claims - Functional Language**

APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997)

“[A]pparatus claims cover what a device is, not what a device does.”
Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469,
15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Pilkington whose telephone number is (571) 272-5052. The examiner can normally be reached on Monday-Friday 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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5/10/07



RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER